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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 840

ERNEST J. PIRMAN, et al.,

Petitioners,

v.

FLORIDA STATE IMPROVEMENT COMMISSION, an agency of the State of Florida, and

STATE ROAD DEPARTMENT OF FLORIDA, an agency of the State of Florida,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Subject Index

	Page
Citation of Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	3-8
Reasons for Granting the Writ	8-12
Conclusion	12

Appendix

Appendix "A", Order of Circuit Court Dismissing Cause	13
Appendix "B", Opinion of Supreme Court of Florida	15
Appendix "C", Questions 4 and 5 of Brief of Appellants in Supreme Court of Florida	23
Appendix "D", Chapter 22700, Acts of 1945, Florida	25
Appendix "E", Petition for Rehearing filed by Appellants in Supreme Court of Florida	27
Appendix "F", Chapter 75, Florida Statutes	33
Appendix "G", Map	43

Index to Authorities Cited

Page

American Land Co. v. Zeiss, 219 U. S. 47 9

Bank of Columbia v. Oakley, 4 Wheat. 235, 244 8

Commissioners of Highways v. Ludwig, 151 Mich. 498, 115 N. W. 419 10

Fed. Communications Com. v. W. J. R. 337 U. S. 265 9

Mountain Timber Co. v. Washington 243 U. S. 219 9

N. Ward Co. v. Board of Street Commissioners (Mass.) 104 N. E. 965 10

State of Florida v. Florida State Improvement Commission, 72 So. 2d 28 12

Twining v. New Jersey, 211 U. S. 78 8-9

Union Refrig. Transit Co. v. Commonwealth of Kentucky, 199 U. S. 194 9

Texts

56 American Jurisprudence, Sec. 223, p. 683 10

Nichols on Eminent Domain, 3rd Ed. Vol. I, p. 158 10

Statutes

Chapter 22700, Acts of 1945, Florida 3, 5, 7, 10, 12

Chapter 75, Florida Statutes 3, 12

62 Stat. 929, Title 28, U. S. C. A., Section 1257 (3) 2

14th Amendment to U. S. Constitution 2, 5, 6, 7, 8

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FLORIDA STATE IMPROVEMENT COMMISSION, an agency of the State of Florida, and

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioners, Ernest J. Pirman, Ruth Dickinson Pirman, Edythe Mae Garten, Irwin R. Wolfe, J. H. Mathews, Herbert V. Tennant, Edwin E. Prall and William Bragg, individually on behalf of themselves, and all others of the same class similarly situated, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Florida, entered in the above entitled cause on February 16, 1955.

CITATION OF OPINION BELOW

The (Circuit) court of original jurisdiction, without opinion, granted Respondents' Motion to dismiss the Complaint (Appendix "A" hereto.) The opinion of the Supreme Court of Florida, affirming the order of the Circuit Court, is reported in 78 So. 2d 718, copied in App. "B", and in R. I, p. 40-46.*

JURISDICTION

The judgment of the Supreme Court of Florida was entered February 16, 1955 (R. I, p. 40-46) and rehearing was denied without opinion March 4, 1955 (R. I, p. 51.)

The jurisdiction of this Court is invoked under 62 Stat. 929, Title 28, U.S.C. A., section 1257 (3).

QUESTIONS PRESENTED

The federal questions presented for review were raised in the court of first instance in the Complaint, paragraphs 13 and 14 (R. I, p. 7-9), and in the Supreme Court of Florida on appeal by Assignments of Error 1, 2 and 3 (R. I., p. 36); they were argued in petitioners' Brief filed in said Court (R. I, p. 36, 37, and App. "C"), and in the Petition for Rehearing timely filed, paragraphs 1, 5 and 7 (R. I, p. 47-50 and App. "E".) They are:

Whether, within the limitations of the due process clause of the 14th Amendment to the Constitution of the United States, and of prior decisions of this Court,

---

* The record is in 2 volumes, namely: the record before the Supreme Court of Florida in this case, herein symbolized R. I; and the record before said Court in the earlier proceedings to validate bonds to finance construction of the Manatee County 5-bridge program, herein symbolized R. II. App. herein means Appendix.

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Respondents may, under the conditions and circumstances hereafter explained:

(1) Construct with tax funds a public causeway and bridge through Palma Sola Bay, Manatee County, Florida (rather than around the Bay to the North) as a part of a proposed new road from Bradenton to Anna Maria Island;

(2) Whether such proposed new road can be built at all since the existing road and bridge through Cortez affords reasonable access to Anna Maria Island; and

(3) Whether the manner in which the official proceedings have been conducted violates procedural due process of law.

STATUTES INVOLVED

The statutory provisions involved are Chapter 22700, General Laws of Florida, 1945, (App. "D") and Chapter 75, Florida Statutes, 1953 (App. "F".)

STATEMENT

Respondents and the Board of County Commissioners of Manatee County began in 1952 to formulate a road and bridge building plan for that County which is now known as the 5-point program. It consists of (a) a new bridge across Sarasota Pass and road connections to Bradenton; (b) replacing the existing bridge at Cortez and continuing the existing road to Bradenton; (c) bridging the pass between Anna Maria Island and Longboat Key; (d) replacing the existing bridge over Braden River; and (e) building another bridge across Manatee River if money is left over out of a $6,000,000 bond issue

proposed as a means of financing the entire program. The bonds are payable out of tolls for use of all bridges to Anna Maria Island, plus the percentage of taxes from gasoline and other petroleum products allocable to Manatee County out of the total collected by the State.

By this action, petitioners (citizens and tax payers of said County,) seek to enjoin respondent from using tax funds for building through Palma Sola Bay, or from building any part of the proposed new road to Anna Maria Island.

The route of the proposed new road is so vaguely and indefinitely described in the official proceedings as to be impossible of determination, namely:

> "a) PALMA SOLA BRIDGE, described as a two-lane bridge with movable span over Sarasota Pass (Intracoastal Waterway), and causeways, bridge and road approaches from State Road 684 (GIA) on Anna Maria Island to a westerly extension of Manatee Avenue on the mainland east of Palma Sola Bay, together with necessary roadway connections between Palma Sola Bay and downtown Bradenton." (R. II, p. 17)

The first official proposal (February 23, 1952, R. II, p. 14) described this item as—

> "A two-lane crossing with bascule span connecting the mainland and Anna Maria Island *on a westerly* extension of Manatee Avenue, Bradenton," (R. II, p. 10)

which is definite enough. But on February 25, 1953, the *new proposal* was made (R. II, p. 15) changing the description to read as first above stated, and that description was carried throughout the proceedings, including

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the validation of the bonds, and purporting to follow that description, the respondents now propose to build at the location shown in red on the map (App. "G" and R. I, p. 12)

The other item is definitely and certainly described as:

> "b) CORTEZ BRIDGE, described as a two-lane bridge with movable span over the Intracoastal Waterway at Cortez to replace the existing obsolete and inadequate wooden bridge, with connections to existing roadways." (R. II, p. 17)

Upon learning that under description "a)" respondents intend to build through Palma Sola Bay, this suit was instituted.

Petitioners claim that Ch. 22700, Gen. Laws of Florida, 1945, if acted upon, (1) fundamentally takes their property without due process, and (2) is too vague, indefinite and uncertain to authorize construction through the Bay, and therefore takes their property without procedural due process.

The court of original jurisdiction granted a motion to dismiss the Complaint (R. I, p. 34, 35), the Supreme Court of Florida affirmed that order (Opinion, R. I, p. 40-46, and App. "B"), and denied a Petition for Rehearing timely filed (R. I, p. 47-50, and App. "E").

The Complaint, Paragraph 13 (b), avers that Ch. 22700, Gen. Laws of Florida, 1945, violates the due process clause of the 14th Amendment to the Constitution of the United States because—

> " . . of the arbitrary and unnecessary expenditure and waste of public funds,"

which the construction of the highway through Palma Sola Bay will entail;

> ". . and because it is manifestly unnecessary and a deliberate waste of public funds to construct through and across Palma Sola Bay as distinguished from constructing said road around the Bay;"

and that—

> ". . . irrespective of the provisions of said Chapter 22700 . . . all of their constitutional rights herein specified will be violated by the construction of said road as now proposed by the said defendants. . ."
> (last clause of Par. 13)

Paragraph 14 of the Complaint raises the additional point that reconstruction of the existing bridge at Cortez makes the construction of the new road, whether through Palma Sola Bay or not, "so unnecessary, extravagant, wasteful and arbitrary" as to violate every constitutional provision "specified in Paragraph 13", as related to the taxpaying plaintiffs.

The foregoing language invokes the application of the due process clause of the 14th Amendment to every result which will allegedly accrue from (1) building the proposed new road, and (2) from building it through Palma Sola Bay.

The Circuit Court granted defendants' Motion to dismiss the Complaint and on appeal, by assignments of error No. 1, 2 and 3 (R. I, p. 36) the ruling of the lower court in its entirety was properly presented for decision of the Supreme Court of Florida.

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Question Four in brief of Petitioners duly filed in said Court is—

> "Do not the facts averred in the Complaint, as amended, and admitted by the Motion to Dismiss, show that to build the proposed road through Palma Sola Bay, instead of around it to the north, is arbitrary, needlessly wasteful of public funds, and therefore violative of Sections 1, 4 and 12 of the Declaration of Rights, and the 14th Amendment to the Constitution of the United States?"

And Question Five of said Brief:

> "Is not Chapter 22700, General Acts of 1945, purporting to authorize the construction of a road through Palma Sola Bay, unconstitutional and void for the reasons stated in Question Four, and because of uncertainty and ambiguity" in describing the route?
>
> (R. I, p. 52 and App. "C")

The Supreme Court affirmed the order of dismissal, whereupon Petition for Rehearing was filed (R. I, p. 47-50, App. "E") in which the 14th Amendment was further invoked as follows:

Paragraph 1 avers that the addtional cost of $600,000 to $1,000,000 "is so arbitrary and unreasonable as to take the property of the plaintiffs by means of taxation without due process of law. The conditions and results averred in the Complaint show more fully why such taking is arbitrary."

Paragraph 4—"The opinion even goes far enough to indicate that 'the lawfully constituted boards' might route a road through a bay within 100 feet of the shoreline, or down a river instead of across it, or through the "State Capitol or the Supreme Court Building, thereby

overlooking and failing to apply the Constitutional provisions intended to protect against such arbitrary and foolish conduct."

In Paragraph 5 (b) it is averred:—"That the arbitrary waste of money, spoilation of the Bay, deprivation of the conveniences of the road to owners living northward of the Bay, etc., takes the property of the plaintiffs without due process of law."

And in Paragraph 7 (b): "The opinion holds that appellants are bound as to the location of the road by the final decree of validation, apparently overlooking that the road is not located or described as running through Palma Sola Bay in any of the validating proceedings or at all, and further overlooking that if bonds can be and are validated without first locating the road, due process of law requires that property owners must be heard after it is located, if their rights are affected," etc.

REASONS FOR GRANTING THE WRIT

The Florida Court has decided a federal question of substance not heretofore determined by this Court under any similar set of facts, and has decided it in a way probably not in accord with decisions of this Court rendered under different facts, to-wit: Whether petitioners' property will be taken without due process of law, fundamentally or procedurally, if the plan sought to be enjoined is carried out.

The 14th Amendment strikes down abritrary and capricious state action in all forms. Its purpose is ". . to secure the individual from the arbitrary exercise of the powers of government." BANK OF COLUMBIA v. OAKLEY, 4 Wheat. 235, 244; TWINING v. NEW

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JERSEY, 211 U. S. 78; MOUNTAIN TIMBER CO. v. WASHINGTON, 243 U. S. 219; AMERICAN LAND CO. v. ZEISS, 219 U. S. 47; UNION REFRIG. TRANSIT CO. v. COMMONWEALTH OF KENTUCKY, 199 U. S. 194.

> "Due process of law . . . guarantees no particular form of procedure but protects substantial rights." Federal Com. Com. v. W. J. R., 337 U. S. 265.

The proposed road will not be a main artery of travel or link connecting populous centers, but a by-way (a second avenue of access) connecting the City of Bradenton with the gulf beach on Anna Maria Island, near the center. The road will be slightly shorter than the existing road and bridge through the town of Cortez to said Island at a point approximately 2 miles south of the proposed new bridge.

Obviously whether a particular act is arbitrary and capricious and a useless waste of public funds, depends upon the circumstances and conditions of each case. In a great city many bridges may be necessary to connect portions divided by water. In a rural area bridges across major streams are widely separated. The need must always be measured against the cost of construction and maintenance. The travel requirements of a great city cannot be compared with those of a country location; nor a highway connecting distant points and populous centers with a by-way from a town to a bathing beach.

Furthermore, the necessity and cost of crossing a body of water, as compared with the possibility and cost of going around it, together with the advantages that usually accrue to a larger area served by going around must be considered.

We readily concede that within the bounds of reason the administrative authorities must finally determine, but we insist that the Palma Sola Bay proposition transcends all reason and substitutes arbitrariness and capriciousness. Property would be taken without due process of law if a highway in a rural area should be constructed in navigable water 300 feet from and parallel with the shoreline. Similarly if it crossed the north end of the bay only 500 feet from the shoreline. The question then arises—how far south of the north end of the Bay can a causeway and bridge lawfully be built? A glance at the map shows that in this case the portion of the Bay north of the proposed bridge will be dwarfed to pond size. The Bay will be cut off. Access to and from the Bay and connecting waters and the view from north of the bridge will be ruined, and property values necessarily diminished, all of which the Florida Court's opinion says is *Damnum absque injuria,* and that *the property owners have no remedy.* (R. I, p. 46)

Navigable waters cannot be obstructed without *explicit* legislative authority, (NICHOLS on EMINENT DOMAIN, 3rd Ed., Vol. I, p. 158; 56 AM. JUR. p. 683, § 223; N. WARD CO. v. BOARD OF STREET COMMISSIONERS (Mass.) 104 N.E. 965; COMMISSIONERS OF HIGHWAYS v. LUDWIG et al., 151 Mich. 498, 115 N. W. 419), hence if Chapter 22700 is void, the whole plan falls.

We submit that in Manatee County, with an area of 701 sq. miles, a population, according to the federal census of 1950, of only 34,704, and the City of Bradenton with a population of only 13,604, and considering the nature of the road and additional cost as hereinabove stated, the proposed construction through the Bay is

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arbitrary, capricious and a needless waste of public funds to which plaintiffs are required to and do contribute in the form of taxes.

Question Two, makes the further point that in view of the existing road from Bradenton to Cortez, and the bridge across to Anna Maria Island at that point, the proposed new road to be built at a cost of approximately $2,500,000 is not justified, and likewise arbitrary and capricious.

Question Three invokes the law of procedural due process. As shown supra, pages 4 and 5 the original proposal of February 23, 1952, was to build—

> "A two-lane crossing with bascule span connecting the mainland and Anna Maria Island on a westerly extension of Manatee Avenue, Bradenton."

But that was abandoned, and a new plan proposed containing the description "a) PALMA SOLA BRIDGE", etc., supra, which describes a bridge to be built over Sarasota Pass, with connecting approaches from State Road 684 on Anna Maria Island, but it does not identify the starting point on State Road 684, and said road is about six miles long. Nor does it say at what point it will cross Sarasota Pass, which the map (R. I, p. 12) shows to be about four miles long, nor in what direction or directions it leads from the indefinite beginning point, except that it connects with Manatee Avenue at some point east of Palma Sola Bay.

The opinion of the Florida Court does not say that this description could be followed, or that the proposed route could be located by an engineer; it does say that said description is more definite than that in Chapter

22700, and holds that it was unnecessary to describe the route so an engineer could locate it.

Notwithstanding jurisdiction to validate the bonds (Ch. 75, Florida Statutes App. "F") rests solely upon service of notice by publication, which called upon all persons to show cause, if any, why the bonds should not be validated (R. II, p. 151-152), the opinion says—

> "The appellants in this case are bound by the final decree of validation relating to the description and location of the bridge over Palma Sola Bay, together with the necessary roadway connections and approaches as set forth in State of Florida v. Florida State Improvement Commission," 72 So. 2d 28.

In other words, we are bound by a "description and location of the bridge over Palma Sola Bay" although such supposed description is too indefinite to be traceable by an engineer, and property owners are precluded because they did not object to a proposed project which they could not locate. This makes the judicial process a mockery, and arbitrarily and capriciously takes petitioners' property without a hearing.

CONCLUSION

For the foregoing reasons, we submit that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

O. K. REAVES

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Tampa 1, Florida,

Attorney for Petitioners.

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APPENDIX "A"

ORDER ON MOTION TO STRIKE AND ON MOTION TO DISMISS

This cause coming on this day to be further heard upon the motion of the plaintiff to strike certain portions of the Motion of the defendants to dismiss, as well as to strike the affidavit of Ralph W. Hartsfield heretofore filed herein, and it appearing to the Court that said motion is well founded; it is, therefore,

ORDERED and ADJUDGED that said motion to strike be and the same is hereby sustained, and the said portions of said motion to dismiss, as complained about in said motion to strike, as well as the said affidavit, be and the same are hereby severally stricken; and the cause coming on further to be heard upon the motion of the defendants to dismiss the Bill of Complaint herefore filed herein, and the said plaintiffs, since the filing of said motion, having moved the Court for leave to file an amendment to said original Bill of Complaint, which said amendment was allowed and filed as of August 26, A.D., 1954 without objection on the part of any defendant, and the said motion to dismiss having been visited upon the said Bill of Complaint as amended, and the Court having heard argument of counsel upon said motion and having carefully considered the same and now being advised in the premises; it is, therefore,

ORDERED, ADJUDGED, and DECREED that said motion to dismiss the said Bill of Complaint as amended be and the same is hereby sustained, and the said Bill of Complaint be and the same is hereby dismissed with

leave unto the said plaintiffs, however, to amend the same within 10 days from the receipt of a copy of this order.

DONE, ORDERED, ADJUDGED and DECREED at Tallahassee, Leon County, Florida, this 9th day of September, A.D. 1954.

/s/ W. May Walker

W. May Walker
CIRCUIT JUDGE.

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APPENDIX "B"

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1955
EN BANC.

CASE NO. 25,849

ERNEST J. PIRMAN, ET AL.,

Appellants,

-vs-

FLORIDA STATE IMPROVEMENT COMMISSION, and STATE ROAD DEPARTMENT OF FLORIDA,

Appellees.

Opinion filed February 16, 1955.

An Appeal from the Circuit Court for Leon County, W. May Walker, Judge.

Mabry, Reaves, Carlton, Fields & Ward, for Appellants. J. Turner Butler, Ford L. Thompson and Dewey A. Dye, for Florida State Improvement Commission, Ross H. Stanton, Jr., for State Road Department of Florida Appellees.

MATHEWS, C. J.,

This is another example of taxpayers and property owners attempting to substitute their judgment or have the Court substitute its judgment for that of the constituted authorities vested with the power to designate the location of a road.

The selection of locations for public improvements has caused more delay in constructing such public improvements than any other cause. This is especially true with reference to roads and bridges. It is impossible to select a site or location for a major road or bridge which will satisfy the desires of all the citizens and taxpayers. The discretion to make such selections is generally vested in administrative boards, or the location itself is fixed by the Legislature. There is no constitutional provision which requires that the location of a road or bridge should be fixed by the Legislature or by the administrative board with such certainty that it can be located by a surveyor as a prerequisite to the issuance of bonds or the validation of such bonds.

The appellants in this case own some property which would be benefited materially if the constituted authorities would construct a road around Palma Sola Bay instead of across or over the Bay. The real question in which appellants are interested is stated in their brief where they state: "Indeed, plaintiffs would be glad to see the proposed new highway connecting Anna Maria Island with Bradenton constructed if it ran around Palm Sola Bay on the north rather than through it, and if, instead of widening Manatee Avenue, one-way streets were used."

Chapter 22700, General Laws of Florida, 1945, names, designates and establishes a state road, forming a part of the system of state roads of the State of Florida, a road in Manatee County described as follows:

> "Commencing at or near the NW corner of the SW¼ of Section 30, Township 34 South, Range 17 East, the said point being at the westerly end of Manatee Avenue (Present State Road No. 18) near

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> the westerly (sic) shore of Palma Sola Bay; thence running in a generally westerly direction for a distance of 3.9 miles more or less to a junction with Anna Maria Road (Present State Road No. 18-A) on Anna Maria Key, latter said point of junction being at or near the SE corner of the SW¼ of the SW¼ of the SW¼ of Fractional Section 28, Township 34 South, Range 16 East."

After much discussion and agitation, sentiment crystallized for the construction of what is now called the Manatee County Bridge Project. The bridge in question over Palma Sola Bay is only a portion of the project and this particular bridge and its approaches is the part of the project now under attack.

The description of the Palma Sola Bridge contained in the resolutions authorizing the lease-purchase agreement of the State Improvement Commission and the State Road Department of the State of Florida at the request of the Board of County Commissioners of Manatee County is as follows:

> "a) PALMA SOLA BRIDGE, described as a two-lane bridge with movable span over Sarasota Pass (Intracoastal Waterway), and causeways, bridge and road approaches from State Road 684 (G1A) on Anna Maria Island to a westerly extension of Manatee Avenue on the mainland east of Palma Sola Bay, together with necessary roadway connections between Palma Sola Bay and downtown Bradenton."

This description is a more definite description than that contained in Chapter 22700, General Laws of Flor-

ida 1945, and is contained within the general description set forth in said Act.

The appellants contend that the description set forth in Chapter 22700, General Laws of Florida 1945, and in the resolutions above mentioned, was so indefinite that the actual location could not be determined by a surveyor and, therefore, said Act and the resolutions above mentioned were null and void and that the determination of administrative authorities to build a bridge and make the connecting approaches in question was capricious and arbitrary. There is no merit to these contentions.

A bridge and its approaches are parts of a road. Section 341.09 F. S. is simply declaratory of what has always been considered to be a road or a part of a road. That section reads as follows:

> "The term 'road' and 'roads' as used in this chapter shall be construed to mean and include all highways and ways for public travel, including means for crossing streams by ways of bridges or ferries, under the jurisdiction of the several boards of county commissioners, or boards of bond trustees of the several counties or subdivisions thereof, of this state, or upon which such boards may expend any public money or cause work to be done, or any roads that may by this or any other law be placed under the supervision and control of the state road department."

Section 341.63(3) F. S. vests power in the State Road Department to make any project, or part thereof, a state road, or a part thereof. Section 341.47 F. S. vests power and authority in the State Road Department to determine and fix lines and locations of roads. Section

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341.81 F. S. provides that all routes that may be hereafter approved, designated, dedicated and constructed by the State Road Department are designated and declared to be parts of the State Highway System of Roads.

Chapter 22700, General Laws of Florida 1945, must be construed in connection with the above sections of the law and it is very clear that the Legislature has vested in administrative boards, created by it, the power and authority to take every action taken in establishing and designating the location of all parts of the project known as the "Manatee County Bridge Project", which includes the "Palma Sola Bridge", as described in the resolutions of the Improvement Commission, the State Road Department, the Board of County Commissioners, and the validation petition. Lewis v. Leon County, 91 Fla. 118, 107 So. 146; Morrison v. Farnell, 126 Fla. 385, 171 So. 528; Orange County v. Fordham, 160 Fla. 259, 34 So. 2d 438; State v. Florida State Improvement Commission, Fla., 75 So. 2d 1; and Webb v. Hill, Fla., 75 So. 2d 596.

The power of county commissioners to issue county bonds for the construction of county roads is provided for by Chapter 130 F. S., and may be compared with the power conferred upon the duly created administrative boards involved in this case. There is no requirement in the statutes or the Constitution that the location of such roads should be fixed and established prior to the validation or issuance of bonds. So as far as the Constitution and the statutes are concerned, the resolution may provide for county roads generally and after the validation and issuance of the bonds, the county commissioners may then determine the location of the roads to be constructed.

The board of county commissioners may, however, describe the road or locate the road prior to the validation and issuance of the bonds and when that is done, the board will not be permitted to deviate from the location as established. In the case of Whitner v. Woodruff, 68 Fla. 465, 67 So. 110, prior to the bond election and issuance of the bonds, the County Commissioners designated a certain street in Sanford to be improved from the proceeds of a portion of the bonds. After the bonds had been issued, the County Commissioners decided to change the location of the improvement by changing to another street. A suit was brought to enjoin such change or deviation. The lower court approved the changed location but this Court reversed the lower court and held that such change or deviation could not be made after the bonds had been approved and issued.

In this case the bill of complaint showed that the bonds had been validated and further showed that a portion of the proceeds were to be used for *a bridge,* with movable span over Sarasota Pass, and causeways, bridge and road approaches from State Road 684 on Anna Maria Island to a westerly extension of Manatee Avenue on the mainland east of Palma Sola Bay, together with necessary roadway connections between Palma Sola Bay and downtown Bradenton. The bill of complaint specifically refers to the validating decree of said bonds in the case of State of Florida v. Florida State Improvement Commission, Fla., 72 So. 2d 28. These bonds are now ready to be sold. The transcript of record in the above case has been made a part of the record in this case. The appellants in this case are bound by the final decree of validation relating to the description and location of the bridge over Palma Sola

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Bay, together with the necessary roadway connections and approaches as set forth in State of Florida v. Florida State Improvement Commission, supra.

The rule nisi in the bond validation proceeding required all persons to appear on the 19th day of January, 1954. The appellants contend they did not know that it was intended to build a causeway and bridge across Palma Sola Bay instead of around the Bay until July 26, 1954. Yet, the validation petition, which was a part of the validation proceeding was made a part of the record in this case by the appellants, contained the description of the "Palma Sola Bridge" here above set forth, and also the following:

> "Provided, however, that said toll bridges (Palma Sola Bridge and Cortez Bridge) described in (a) and (b) above, and said Longboat-Anna Maria Bridge, described in (c) above, being essential to the production of tolls from said two toll bridges, shall be completed substantially in accordance with plans and specifications for said bridges filed with the Department prior to the issuance of bonds to finance the construction of said bridges."

The fact that the War Department of the United States may have granted a permit to take care of the needs of navigation different from the ideas and desires of the appellants is of no consequence in this proceeding.

All proceedings providing for the bridge and causeways across Palma Sola Bay appear to have been taken by the lawfully constituted boards authorized by law to take such proceedings. There is no fact alleged to show that the proceedings taken were arbitrary or capricious, and the appellants have no right to substitute

their judgment for that of the lawfully created boards in question, and this Court has no authority to substitute its judgment and discretion for that of such boards. For this Court at this late date to authorize a change in location as now fixed and established for a bridge over Palma Sola Bay to a road around the north of the Bay would constitute a deviation and departure from the location as established and would make it necessary to undo everything which has been done and to start all over again. This Court has no such power.

It is next contended by the appellants that running the road through Palma Sola Bay and the construction of the causeways and bridge violates the property rights of the appellants owning riparian property on Palma Sola Bay north of the crossing.

The bill of complaint shows that the appellants do not own any of the property which must be acquired in building the bridge, approaches and causeways. It does show that they are riparian owners on the Bay north of the crossing but none of their property is taken. This Court settled this question contrary to contention of the appellants in the case of Duval Engineering and Contracting Company, et al. v. Sales, opinion filed December 3, 1954, written by Mr. Justice Terrell.

We have carefully considered each and every contention of the appellants and they are without merit. The Chancellor was correct in granting the motion to dismiss the bill of complaint as amended.

Affirmed.

THOMAS, ROBERTS AND DREW, JJ., CONCUR

TERRELL, J., Agrees to the judgment of affirmance.

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APPENDIX "C"

Appellants in the cause entitled: Ernest J. Pirman, et al., appellants, vs. Florida State Improvement Commission, and State Road Department of Florida, appellees, filed their Brief in the Supreme Court of Florida in said cause and Questions Four and Five thereof, taken from page 6 of said Brief, are as follows:

QUESTION FOUR

"Do not the facts averred in the Complaint, as amended, and admitted by the Motion to Dismiss, show that to build the proposed road through Palma Sola Bay, instead of around it to the north, is arbitrary, needlessly wasteful of public funds, and therefore violative of Sections 1, 4 and 12 of the Declaration of Rights, and the 14th Amendment to the Constitution of the United States?"

QUESTION FIVE

"Is not Chapter 22700 General Acts of 1945, purporting to authorize the construction of a road through Palma Sola Bay, unconstitutional and void for the reasons stated in Question Four, and because of uncertainty and ambiguity?"

APPENDIX "D"

LAWS OF FLORIDA—1945

CHAPTER 22700—(No. 186)
HOUSE BILL NO. 383

AN ACT To Declare, Establish and Designate a Certain State Road in Manatee County, Florida.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That the following named and designated road be and the same is hereby declared designated and established as a state road, forming a part of the system of state roads of the State of Florida:

Commencing at or near the NW corner of the SW¼ of Section 30, Township 34 South, Range 17 East, the said point being at the westerly end of Manatee Avenue (Present State Road No. 18) near the westerly shore of Palma Sola Bay; thence running in a generally westerly direction for a distance of 3.9 miles more or less to a junction with Anna Maria Road (Present State Road No. 18-A) on Anna Maria Key, latter said point of junction being at or near the SE corner of the SW¼ of the SW¼ of the SW¼ of Fractional Section 28, Township 34 South, Range 16 East.

Section 2. That this road shall be appropriately numbered by the State Road Department of Florida and shall be entitled to all rights and privileges of other designated state roads.

Section 3. This Act shall take effect immediately upon its becoming a law.

Became a law without the Governor's approval.
Filed in Office Secretary of State May 24, 1945.

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APPENDIX "E"

On the 24th day of February, 1955, Appellants filed Petition for Rehearing in the office of the Clerk of the Supreme Court of Florida, in words and figures following:

IN THE SUPREME COURT OF FLORIDA

Case No. 25,849

ERNEST J. PIRMAN, ET AL.,

Appellants,

-vs-

FLORIDA STATE IMPROVEMENT COMMISSION and STATE ROAD DEPARTMENT OF FLORIDA,

Appellees.

PETITION FOR REHEARING

Come now the Appellants in the above styled cause, by their undersigned attorneys, and petition the Court to grant a rehearing in and reargument of said cause for the reasons herein stated, and each of them:

1. The Court overlooked or failed to duly consider that this is not a case of the type described in the first paragraph of the opinion, but a case where plaintiffs invoke the provisions of the State and Federal Constitutions which forbid arbitrary action by all governmental agencies, whether legislative or administrative, and that to bridge Palma Sola Bay at a cost of from $600,000 to $1,000,000, more than it would cost to run the road around the Bay, is so arbitrary and unreasonable as to take the property of the plaintiffs by means

of taxation without due process of law. The conditions and results averred in the complaint show more fully why such taking is arbitrary.

2. The facts averred show that *a legal fraud* upon the plaintiffs and other taxpayers will result. Intentional fraud is not charged.

3. It appears from the opinion that the Court considered "Palma Sola Bridge", named in the validating proceedings, as bridging Palma Sola Bay, whereas the facts shown by the complaint are that "Palma Sola Bridge" crosses Sarasota Pass, and that between Sarasota Pass and Palma Sola Bay are Parico Island, about one mile wide, Parico Bayou, and then another strip of land approximately one-half mile wide before Palma Sola Bay is reached. The so-called Palma Sola Bridge is not even near Palma Sola Bay.

4. The opinion even goes far enough to indicate that "the lawfully constituted boards" might route a road through a bay within 100 feet of the shoreline, or down a river instead of across it, or through the State Capitol or the Supreme Court Building, thereby overlooking and failing to apply the Constitutional provisions intended to protect against such arbitrary and foolish conduct.

5. The opinion states that—

> "All proceedings providing for the bridge and causeways across Palma Sola Bay appear to have been taken by the lawfully constituted boards authorized by law to take such proceedings."

This statement overlooks:

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(a) That there is not one word said in any of the proceedings about bridging Palma Sola Bay or building a causeway through it.

(b) That the arbitrary waste of money, spoilation of the Bay, deprivation of the conveniences of the road to owners living northward of the Bay, etc., takes the property of the plaintiffs without due process of law.

(c) That the beginning point "from State Road 684 (G1A) on Anna Maria Island" is too indefinite to route the road through Palma Sola Bay.

6. The opinion on page 6 says that—

"The appellants contend that they did not know that it was intended to build a causeway and bridge across Palma Sola Bay", etc.

yet from the validating petition there is a paragraph about the bridges which concludes with the statement that they—

"shall be completed substantially in accordance with plans and specifications for said bridge filed with the Department *prior to the issuance of bonds to finance the construction of said bridge.*"

The underscored part shows that the plans and specifications were not required to be filed until some indefinite time, one day forsooth it might be, *"prior to the issuance of bonds to finance construction of said bridges."* Said bonds have not yet been issued and the Court could not presume from said quoted statement that the plans and specifications were on file with the Department or in any manner available to the plaintiffs, or that they

are even now so available. Surely this statement, reflecting upon the plaintiffs' veracity on a point so material in the determination of this case, would not have been made if the Court had not overlooked the effect of said quoted matter.

7. The opinion holds that it is not necessary that the road be located prior to the issuance and validation of bonds, thereby overlooking Chapter 75 F.S. providing for the validation of bonds, when considered in its entirety, contemplates the contrary; that—

> ". . citizens and others having or claiming any right, title or interest in property to be affected by said issuance of bonds or certificates, or to be affected in any way thereby"
>
> (Section 75.05 F.S.)

cannot answer and defend their interests unless they know where the road is to run. The opinion holds that appellants are bound as to the location of the road by the final decree of validation, apparently overlooking that the road is not located or described as running through Palma Sola Bay in any of the validating proceedings or at all, and further overlooking that if bonds can be and are validated without first locating the road, due process of law requires that property owners must be heard after it is located if their rights are affected. Moreover, the first plan in this case described the road as:

> "connecting the mainland and Anna Maria Island on the westerly extension of Manatee Avenue" (Valid. Tr. 10)

which would carry it through Palma Sola Bay. This description was promptly changed by a "new proposal"

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(Valid. Tr. 15) to the vague and indefinite description now complained of which does not state that the road runs through the Bay. Why change the description if it was not intended to change the route?

8. The opinion on page 2 attributes ulterior motive to appellants by charging that they are prompted by a desire to have the road located where it will benefit their property, thereby overlooking that if the road runs round the Bay it will entirely miss the property of Mr. Pirman, who owns property where the road enters the Bay on the East, and the property of another appellant who owns on each side where the proposed road enters or leaves the Bay on the West, and further overlooking that the appeal is from a final decree entered on motion to dismiss the complaint, which has the legal effect of admitting all averments well pleaded; further overlooking that the quotation used by the Court from appellants' brief does not justify the conclusion drawn by the opinion but only expresses their view that the proposed road and bridge improvement are desirable from the standpoint of the public welfare if more economically and serviceably built around the Bay.

Respectfully submitted,

MABRY, REAVES, CARLTON,
FIELDS & WARD

/s/ O. K. Reaves,

a Member of the Firm,

ATTORNEYS FOR APPELLANTS.

APPENDIX "F"

FLORIDA STATUTES, 1953

CHAPTER 75

VALIDATION OF BONDS; PROCEDURE

75.01 Jurisdiction
75.02 Petitioner
75.03 Condition precedent
75.04 Petition
75.05 Rule nisi and service
75.06 Publication of notice
75.061 Application of §§75.05 and 75.06 as amended
75.07 Intervention; hearings
75.08 Appeal and review
75.09 Effect of final decree
75.10 Recording of decree in other counties
75.11 Stamping instruments validated
75.12 Payment of costs
75.13 Certain prior proceedings validated
75.14 Land owner or taxpayer not disqualification of judge
75.15 Substitution of judges
75.16 Certain orders and decrees validated.

75.01. Jurisdiction—Circuit courts of this state shall have power and jurisdiction to take cognizance of, try and determine proceedings for the validation of bonds and certificates of indebtedness and all matters connected therewith.

75.02 Petitioner—Any county, municipality, taxing district or other political district or subdivision of this state, including the governing body of any district established for the purpose of drainage, conservation or

reclamation and including also state agencies, commissions and departments authorized by law to issue bonds may, if deemed expedient, determine its authority to incur bonded debt or issue certificates of indebtedness and the legality of all proceedings in connection therewith, including, in proper cases, any assessment of taxes, levied or to be levied, the lien of such taxes, and of proceedings or other remedies for their collection. For such purpose a petition may be filed in the circuit court in such county or in the county in which such municipality or district, or any part thereof, may be located, against the State of Florida and the taxpayers, property owners and citizens of such county, municipality or district, including nonresidents owning property or subject to taxation therein. In proceedings for the validation of bonds or certificates of indebtedness issued by any of the state agencies, commissions or departments, such petition may be filed in the circuit court of the county in which the proceeds of such bond issue are to be expended, or in the circuit court of the county in which the seat of state government is situated, and such petition shall be brought against the State of Florida and the taxpayers, property owners and citizens thereof, including nonresidents owning property or subject to taxation therein.

75.03 Condition Precedent—As a condition precedent to the filing of a petition for the validation of bonds or certificates of indebtedness, the county, municipality, state agency, commission or department, or district desiring to issue the same shall, in accordance with the provisions of law regulating and controlling the same, either cause an election to be held to authorize the issuance of such bonds or certificates of indebtedness and show prima facie that such election was in favor of the issuance of the same, or, when permitted by law, adopt

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an ordinance, resolution or other proceeding permitted by law for the issuance of such bonds or certificates of indebtedness.

75.04 Petition—The petition for validation of bonds shall briefly set out, by proper allegations, references or exhibits, the petitioner's authority for incurring the bonded debt or issuing certificates of indebtedness, the holding of an election and the result thereof where an election is required, the ordinance, resolution or other proceeding authorizing the issue and their adoption, all other essential proceedings had or taken in connection therewith, the amount of the bonds or certificates to be issued, the interest they are to bear; and, in case of a district established for the purpose of drainage, conservation or reclamation, the authority for the creation of such district, for the issuance of bonds, for the levy and assessment of taxes and all other pertinent matters.

75.05 Rule nisi and service.—The judge of the circuit court, wherein the petition is filed shall, upon the filing and presentation thereof, make and issue an order in general terms in the form of a notice directed against the State of Florida and against the several property owners, taxpayers, citizens and others having or claiming any right, title or interest in property to be affected by said issuance of bonds or certificates, or to be affected in any way thereby, requiring, in general terms and without naming them, all such persons, and the State of Florida through its state attorney or attorneys of the circuits wherein said county, municipality or district lies, to appear at a time and place within the circuit wherein the petition is filed, to be designated in such order, and show cause why the prayers of the petition should not be granted and the proceedings and

bonds or certificates validated and confirmed as therein prayed. A copy of the above mentioned petition and rule nisi shall be served upon the state attorney of the circuit in which such proceedings are pending, and in cases where the petitioning municipality or district lies in more than one judicial circuit, upon each state attorney of each of such circuits at least eighteen days before the time fixed in said rule nisi for hearing as aforesaid. The state attorney or attorneys shall carefully examine the said petition, and if it appears, or there is reason to believe, that said petition is defective, insufficient or untrue, or if in the opinion of the state attorney or attorneys, the issuance of the bonds or certificates in question have not been duly authorized, defense shall be made thereto as may seem proper by said state attorney or attorneys. The state attorney or attorneys shall have access, for the purposes aforesaid, to all records and proceedings of said county, municipality, state agency, commission or department, or district, and any officer, agent or employee having charge, possession, custody or control of any of the books, papers or records of such county, municipality, state agency, commission, department, or district shall, on demand of the state attorney or attorneys, exhibit for examination such books, papers, or records, and shall, without cost, furnish duly authenticated copies thereof, which pertain to the proceedings for the issuance of said bonds or certificates or which may affect the legality of the same, as may be demanded of him.

In the case of state agencies, commissions or departments a copy of the above mentioned petition and rule nisi shall be served upon the state attorney of the circuit in which such proceedings are pending and if pending in a county when the proceeds of the bond issue

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are to be expended in any other county then upon the state attorney of each county in which it is proposed to expend said proceeds.

75.06 Publication of notice.—Prior to the date set for hearing as provided in the foregoing section, the clerk of the circuit court wherein said petition is filed shall cause a copy of said order or rule nisi to be published in the county wherein the petition is filed, unless the petitioner be a municipality or district in more than one county, then in each of such counties, once each week for three consecutive weeks, commencing with the first publication, which shall not be less than eighteen days prior to the date set for hearing; provided, however, if there be a newspaper published in the territory to be affected by the issuance of the bonds or certificates, and within the county or counties aforesaid, said publication shall be therein, unless otherwise ordered by the court. By the publication of said order or rule nisi, all property owners, taxpayers, citizens and others having or claiming any right, title or interest in said county, municipality or district, or the taxable property therein, shall be considered as and are made parties defendant to said proceedings, and the court shall have jurisdiction of them to the same extent as if named as defendants in said petition and personally served with process in the cause.

In the case of proceedings to validate the bonds of state agencies, commissions or departments, the said rule nisi shall be published in the manner herein provided in a newspaper in each of the counties wherein the proceeds of bonds are to be expended, and in a newspaper published in the county in which the seat of state government is located if said proceedings shall be brought therein.

75.061 Application of §§75.05 and 75.06 as amended.—Sections 75.05 and 75.06, as amended, shall apply to all bond validation proceedings in which the petition shall be filed after it becomes a law, but not to any proceeding pending at such time.

75.07 Intervention; hearings.—Any property owner, taxpayer, citizen or person interested may become a party to said proceedings by pleading to the said petition on or before the time set for hearing as provided in §75.05, or thereafter by intervention upon leave of court. At the time and place designated in the order for hearing, provided for in §75.05, the judge shall proceed to hear and determine all questions of law and fact in said cause, and make such orders as to the proceedings and such adjournments as will enable him to properly try and determine the same and to render a final decree therein with the least possible delay.

75.08 Appeal and review.—Any party to the cause, whether petitioner, defendant or intervenor, or otherwise, dissatisfied with the final decree, may appeal therefrom to the supreme court within twenty days after the entry of such decree. Such appeal may be effected by the filing and recording, in the book wherein said decree is recorded, a notice of appeal returnable in the supreme court not less than fifteen nor more than thirty days after the filing and recording of such notice of appeal. On or before the return day of said appeal the appellant shall file in the supreme court a certified copy of all the said proceedings, including a transcription of all the evidence taken therein before the court. Upon application of either party, such evidence shall be duly certified by the judge who heard said cause and entered the decree appealed from.

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The certified copy of all of said proceedings, as aforesaid, duly filed in the supreme court, shall constitute the record upon which said appeal shall be heard in the supreme court.

Within ten days after the return day of such appeal the appellant shall file his brief in the supreme court and shall deliver a copy thereof to the appellee or his attorney of record, who shall within five days thereafter file his brief, and shall deliver a copy thereof to the appellant or his attorney of record, who may reply thereto within five days. After the time for filing briefs, as aforesaid, has expired the supreme court shall proceed to consideration of said cause upon the record and briefs; provided, however, that if either party shall file a request in writing for oral argument by the return day of such appeal, the court may enter an order setting down said cause for oral argument for the earliest practicable date. Thereafter the supreme court shall give immediate consideration to said appeal and render its decision thereon in due course. Such decision shall be final after ten days and mandate shall issue forthwith, if no petition for rehearing has been filed.

Such appeal shall take priority in the supreme court over all other civil cases therein pending, except habeas corpus.

75.09 Effect of final decree.—In event the decree of the circuit court validates such bonds or certificates, which may include the validation of the political district or subdivision itself and any taxes and assessments affected, and no appeal is taken within the time above prescribed, or if taken and the decree of the circuit court is affirmed, such decree shall be forever conclusive as to all matters adjudicated against the petitioner and

all parties affected thereby, including all property owners, taxpayers and citizens of the petitioner, and the validiity of the said bonds or certificates, and any proceedings or remedies provided for their collection, shall never be called in question in any court.

75.10 Recording of decree in other counties.— In the event any decree entered in the cause extends into more than one county the same shall be recorded in each county in which the petitioning municipality or district extends, such decree shall be recorded in the foreign judgment book in the office of the clerk of the circuit court of such other counties.

75.11 Stamping instruments validated.— Bonds or certificates, when issued under the provisions of this chapter, shall have stamped or written thereon, by the proper officers of such county, municipality or district issuing the same, the following: "Validated and confirmed by decree of the circuit court (specifying the date when such decree was rendered and the court in which it was rendered)", which shall be signed by the clerk of the circuit court in which the decree was rendered, which entry shall be original evidence of said decree in any court of this state.

75.12 Payment of costs.— The costs in each case under this chapter shall be paid by the county, municipality or district filing the petition, except in cases where a tax payer, citizen or other person may appear and contest the proceeding or intervene therein, the court may tax the whole or any part of the costs against such person as shall be equitable and just.

75.13 Certain prior proceedings validated. Any action for validation heretofore brought by any municipality, special taxing district or political district or subdivision which extends into more than one county or judicial circuit, whereby bonds or certificates of indebtedness have been validated in which the proceedings have been brought in one county and a decree has been entered said decree shall be binding on all of the citizens, property owners, or tax payers of each municipality, district or subdivision.

75.14 Land owner or taxpayer not disqualification of judge. No judge of any of the circuit courts of this state shall be disqualified in any validation proceedings, under this chapter, by reason of the fact that he is a land owner or taxpayer of any county, municipality or district seeking relief hereunder.

75.15 Substitution of judges. Whenever it shall appear that any circuit judge is disqualified, is absent, or is unable, on account of sickness or otherwise, to perform his duties in any case instituted or brought in his court to validate bonds or certificates, the judge of any other circuit shall have jurisdiction to hear, try and determine such case and to make and enter any order or decree therein in the same manner as in other chancery cases; and the final decree in such case may be signed or entered at a place other than that designated in the notice and at a time subsequent to the date therein mentioned.

75.16 Certain orders and decrees validated.— All orders and decrees heretofore or hereafter made in proceedings for the validation of bonds or certificates of indebtedness, by any judge disqualified by matters or reasons not appearent on the record itself, shall be valid and binding upon all parties unless attacked within twenty days of the entry thereof; and all orders and decrees heretofore made in such validation proceedings by judges other than the regular judge or those mentioned or designated in the notices, or at places other than, or dates subsequent to, those mentioned in said notices, when it appears that the regular judge was disqualified, absent or disabled from discharging the duties of his office, are hereby ratified and confirmed.

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